

1 HONORABLE RICHARD A. JONES
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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 DONTÉ MCCLELLON,

10 Plaintiff,

11 v.

12 CAPITAL ONE BANK, NA, et al.,

13 Defendant.
14

CASE NO. C19-00446-RAJ

**ORDER DISMISSING
PLAINTIFF'S COMPLAINT**

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16 This matter comes before the Court on Defendant's Motion to Dismiss (Dkt. # 13)
17 and Plaintiff's Motion for Reconsideration (Dkt. # 22) and Motion Pursuant to Rule 60(a)
18 (Dkt. # 27). For the reasons that follow, the Court **DISMISSES** *pro se* Plaintiff Donte
19 McClellon's complaint with leave to amend. Dkt. # 5. Plaintiff's Motion for
20 Reconsideration and Motion Pursuant to Rule 60(a) are **DENIED**. Dkt. # 22, 27.

21 On March 26, 2019, Plaintiff Donte McClellon filed this action against Defendants
22 Capital One Bank, Kellen Andrew Hade, and Miller Nash Graham & Dunn LLP. Dkt. #
23 1-1. Plaintiff also submitted an application to proceed *in forma pauperis*. Dkt. # 1. The
24 Honorable Michelle L. Peterson granted the application. Dkt. # 4. On December 5,
25 2019, Defendants Kellen Andrew Hade and Miller Nash Graham & Dunn LLP filed the
26 instant Motion to Dismiss arguing the Court lacks subject matter jurisdiction over this
27 action. Dkt. # 13. In the alternative, Defendants argue that Plaintiff has failed to state a

1 claim under Fed. R. Civ. P. 12(b)(6). Dkt. # 13. The Motion is unopposed.

2 Original jurisdiction may be based on diversity or the existence of a federal
3 question, as set forth in 28 U.S.C. §§ 1331 and 1332. Federal courts have jurisdiction
4 over civil actions where the amount in controversy exceeds \$75,000, exclusive of interest
5 and costs, and the case is between citizens of different states. 28 U.S.C. § 1332. Under
6 Fed. R. Civ. P. 8(a)(1) a complaint must contain “a short and plain statement of the
7 grounds for the court’s jurisdiction.”

8 Plaintiff does not allege a basis for federal jurisdiction over this action and the
9 Court cannot discern one. Based on the facts alleged in the Complaint, it appears that
10 Plaintiff and Defendant Kellen Andrew Hade are both residents of Washington. Dkt. # 5
11 at ¶ 3.1. As a result, complete diversity does not exist. 28 U.S.C. § 1332(a)(1). To the
12 extent Plaintiff is attempting to assert federal question jurisdiction, Plaintiff has not
13 identified a federal law or statute underlying his claim. Instead, it appears that Plaintiff is
14 only alleging state law defamation claims under RCW 4.36.120. Dkt. # 5 at ¶ 1.1. In
15 sum, Plaintiff makes no allegations that support a finding of federal question jurisdiction
16 or diversity jurisdiction.

17 For the reasons stated above, the Court **DISMISSES** Plaintiff’s Complaint.
18 Dkt. # 5. **Within fourteen (14) days from the date of this Order**, Plaintiff may file an
19 amended complaint addressing the deficiencies addressed above. If Plaintiff does not file
20 an amended complaint within that timeframe, or if Plaintiff files an amended complaint
21 that does not state a cognizable claim for relief or is otherwise untenable under § 1915(e),
22 the Court will dismiss this action with prejudice.

23 Plaintiff also moves for reconsideration of the Clerk’s prior order regarding his
24 Motion for Default and Motion for Default Judgment. Dkt. # 22. Plaintiff reiterates his
25 previous objection that Defendants failed to respond to his Complaint within the time
26 allowed under the Federal Rules of Civil Procedure. Plaintiff appears to misunderstand
27 the federal rules. On October 23, 2019, the Court granted Plaintiff’s motion for service

1 and a **summons was issued**. Dkt. ## 8, 9. This is not, as Plaintiff appears to believe, the
2 date that the Complaint was actually served. On November 19, 2019, the summons and
3 Complaint were served on Defendants Kellen Andrew Hade and Miller Nash Graham &
4 Dunn LLP, as reflected in the return of service filed by the U.S. Marshals Service. Dkt. #
5 11. On December 23, 2019, Defendant Capital One Bank NA was served. Dkt. # 23.

6 Under Fed. R. Civ. P. 12, Defendants Kellen Andrew Hade and Miller Nash
7 Graham & Dunn LLP had 21 days from the date of service to respond – in this case until
8 December 10, 2019. Defendants responded by way of filing their motion to dismiss on
9 December 5, 2019. Defendant Capital One still has until January 13, 2020 to respond.
10 Plaintiff's assertion that he also served Defendants by U.S. Certified mail on April 26,
11 2019 is equally unavailing. Dkt. # 16. Rule 4 requires personal service unless alternative
12 service is permitted by the Court. Fed. R. Civ. P. 4. In this case, personal service was
13 ordered and effectuated. Accordingly, Plaintiff's Motion for Reconsideration and Motion
14 Pursuant to Rule 60(a) are **DENIED**.

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16 Dated this 9th day of January, 2020.

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20 The Honorable Richard A. Jones
21 United States District Judge
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